section 39B of the Dangerous Drugs Act 1952 read with section 34 of the Penal Code.

The facts were explained to Accused 1 in the presence of his Counsel and he admitted all the facts to be true.

From the facts it is revealed that Accused 1 had custody of the amount of drugs referred to in the charge and that under the presumption in section 37(d) of the Act he was deemed to have been in possession of such drugs. There was no proof to the contrary from Accused 1 and under the Act he was assumed to have known the nature of such drugs. I was satisfied that the charge was proved and accepted the plea of guilty from Accused 1. I convicted him.

The Prosecution withdrew the charge against Accused 2 and 3 and I accordingly acquitted them.

In mitigation, the learned Defence Counsel pleaded for the alternative sentence of life imprisonment to be imposed against Accused 1 which was optional before 1983 considering that this was his first offence and that he had shown remorse and was helpful to the Customs.

In view of the substantial quantity of dangerours drugs involved, I was of the opinion that the Accused had no mitigating factors in his favour. If transaction of such substantial quantity of prohibited drugs was successfully carried out, many innocent people would be affected. The consequence would be very damaging to the public and too well known both to members of the public and the Accused himself.

I sentenced Accused 1 to death as required by law and the sentence of death was duly pronounced. Accused 1 now appeals against this decision.

Order accordingly.

Solicitors : *Elyas Majeed & Co.*

ZAKARIYA BIN MUSA v. PUBLIC PROSECUTOR

[A. Cr. J. (Gunn Chit Tuan J.) September 11 & 13, 1984]

[Kuala Lumpur – Selangor Criminal Appeal No. 77 of 1983]

Criminal Law and Procedure – Sentencing – Charge of theft of motor car – Appeal against sentence – Penal Code (F.M.S. Cap. 45), s. 379.

Penal Code, s. 379 – Theft – Plea of guilty – Sentence.

The appellant had pleaded guilty to a charge of theft of a motor car. He was sentenced to 2½ years imprisonment and a fine of $3,000/- or in default 6 months' imprisonment. The appellant appealed against the sentence.

Held: if it was really necessary to impose a fine in addition to the custodial sentence, then the trial magistrate should have taken into consideration, *inter alia*, the financial circumstances of the appellant, the profit arising from the offence, the value of the subject-matter and the amount of injury, if any, inflicted. In this case the sentence was manifestly excessive and the order of the fine in addition to imprisonment should be set aside.

Cases referred to:-

(1) *Tan Kah Eng* v. *Public Prosecutor* [1965] 2 M.L.J. 272.
(2) *Re Fong Ah Hee* [1958] M.L.J. 96, 97.
(3) *Rex* v. *Teo Woo Tin* [1932] M.L.J. 124.

CRIMINAL APPEAL.

K. Chandra for the appellant.

Affendi Hamzah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: The appellant in this case was charged for theft of a motor-car in the Magistrate's Court, Petaling Jaya. He pleaded guilty to the said offence and was sentenced to 2½ years imprisonment and a fine of $3,000/- or, in default six months' imprisonment, to be followed by one year's police supervision.

Mr. Chandra, who appeared for the appellant, contended that the sentence was manifestly excessive as the maximum sentence for theft was three years. He pointed out that although the appellant was a security guard, he has been dismissed from his job and was unable to pay the fine. Counsel referred to *Tan Kah Eng* v. *Public Prosecutor*[1] in which case a seamstress was convicted of carrying on a public lottery contrary to section 4(1) (c) of the Common Gaming Houses Ordinance, 1961, and was sentenced to a fine of $3,000/- or, in default six months' imprisonment. She appealed against sentence and Ambrose J. (as he then was) held that

the fine of $3,000/- was manifestly excessive and that a fine should always be related to the means of the accused. The learned Judge also held in that case that the imposition of a fine beyond the appellant's means or six months' imprisonment in default of payment was tantamount to sentencing the appellant to six months' imprisonment without the option of a fine. Mr. Chandra therefore contended that in the circumstances of the present case the imposition of a fine of $3,000/- or, in default six months' imprisonment, was virtually tantamount to a peremptory sentence of six months imprisonment and was together with the 2½ years' imprisonment manifestly excessive (*Re Fong Ah Hee*).[2] Counsel also contended that the learned magistrate had failed to consider mitigating factors including the fact that the appellant had pleaded guilty and that the stolen car had been recovered. I agreed with learned counsel that if it was really necessary to impose a fine in addition to the custodial sentence, then the trial magistrate should have taken into consideration, *inter alia*, the financial circumstances of the appellant, the profit arising from the offence, the value of the subject matter and the amount of injury, if any, inflicted. (See *Rex* v. *Teo Woo Tin*).[3] In all the circumstances of the case I considered the sentence imposed was manifestly excessive and therefore altered it by setting aside the order of a fine of $3,000/- or, in default six months' imprisonment. The appellant therefore need only serve 2½ years' imprisonment to be followed by one year's police supervision.

Appeal allowed.

Solicitors: *K. Chandra & Co.*

ZAKARIA BIN MOHAMED ESA v. DATO ABDUL AZIZ BIN AHMAD & ORS.

[O.C.J. (Yusoff Mohamed J.) December 30, 1984]

[Johor Bahru – Civil Suit No. 106 of 1983]

Practice and Procedure – Striking out statement of claim – No reasonable cause of action – Scandalous or vexatious – Abuse of process of court – Anti-corruption officers – R.H.C. 1980, 0.18 r. 19 & 0.33 r.2 – Federal Constitution, art. 145(3) – Criminal Procedure Code (F.M.S. Cap.6), s. 109.

In this case the plaintiff sued the defendants for an injunction, damages and costs. His statement of claim states *inter alia* that the defendants are officers of the Badan Pencegah Rasuah (Anti-Corruption Agency), that the defendants abused their powers to commit tort against him that they were neither acting within the scope of their authority nor acting lawfully or in good faith, that they harassed, threatened, intimidated and defamed him in several ways and that the 1st defendant was unhappy over the plaintiff's investigation into two companies and as a result, the 1st defendant became hostile towards him. No defence had been filed at this stage.

The question in this application by the defendants is whether the whole statement of claim should be struck out under 0.18, r.19, R.H.C. 1980, as disclosing no reasonable cause of action, scandalous or vexatious or otherwise it was an abuse of the powers of court.

Held, dismissing the defendant's application: (1) the matters raised by both parties in their affidavits were mainly questions of fact to be decided at trial. The defendants' claim to immunity from suits was also a serious question of law which had to be decided at trial. The present court could not at this juncture usurp the function of a trial judge and deal with these issues summarily;

(2) the present pleading read as a whole and presuming all the allegations to be true was not a plain and obvious case to strike out as disclosing no reasonable cause of action. Nor were they scandalous or vexatious or an abuse of the process of the court on the grounds advanced by the learned Senior Federal Counsel.

Cases referred to:

(1) *Peck* v. *Russell* (1923) 4 F.M.S.L.R. 32, 34.
(2) *Hubbuck* v. *Wilkinson* [1899] 1 Q.B. 86, 91.
(3) *Parry-Jones* v. *Law Society & Ors.* [1968] 1 Ch. 195; [1969] 1 Ch. 1.
(4) *Asher & Ors.* v. *Secretary of State for the Environment & Anor.* [1974] 2 W.L.R. 466.
(5) *Thorne* v. *University of London* [1966] 2 W.L.R. 1080.
(6) *Blackburn* v. *Attorney-General* [1971] 2 All E.R. 1380.

CIVIL SUIT.

Subra Naicker for the plaintiff/respondent.

Datuk Hj. Abu Mansor bin Ali (Senior Federal Counsel) for the defendants/applicants.

Cur. Adv. Vult.

Yusoff Mohamed J. : The question in issue in this case is whether the whole Statement of Claim should be struck out under Order 18 Rule 19 of the Rules of the High Court 1980 as disclosing no reasonable cause of action, scandalous or vexatious or otherwise it is an abuse of the process of the Court.

First, no reasonable cause of action. In considering this Statement of Claim as disclosing no